

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.33539 of 2003

and

WPMP Nos.1030 and 1031 of 2006

N.K.T.National College of  
Education for women

represented by

M.R.Vijaya Shankar

Secretary

21, Dr.Besant Road

Triplicane, Chennai 600 005.

.. Petitioner

vs

1.Joint Director of Collegiate  
Education

Chennai Region, Chennai 2.

2.G.Premkumari

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the first respondent in Rc.No.9547/D4/2001 dated 12.8.2003 confirming the order passed in Na.Ka.No.9547/D4/2001 dated 15.7.2003 and quash the same and direct the first respondent to consider the application for the grant of approval of the punishment proposed to be imposed on the second respondent.

For Petitioner

: Mr.R.Shankaranarayanan

For Respondents

: Mr.I.Paranthaman

Additional Government

Pleader for R1

Mr.K.Doraisami

Senior Counsel

for M/s.Muthumani Doraisami

for R2

ORDER

The petitioner management has brought forth this writ petition for a writ of certiorarified mandamus to quash the orders of the first respondent passed on 12.8.2003, in Rc.No.9547/D4/2001 confirming the order passed in Na.Ka.No.9547/D4/2001, dated 15.7.2003.

2.The Court heard the learned Counsel for the petitioner, the learned Additional Government Pleader for the first respondent and also the learned Senior Counsel for the second respondent. Affidavit in support of the writ petition is perused.

3.After hearing both sides, this Court is of the considered opinion that the writ petition itself could be disposed of as follows.

4.The facts admitted by both sides, can be stated as follows:

The second respondent was working in the petitioner educational institution as Reader/Teacher. While so, certain charges were levelled against her. On enquiry, a charge memo was served upon her on 30.3.1999. She tendered her explanation on 14.5.1999. An Enquiry Officer was appointed. On 20.7.1999, certain allegations were made by the second respondent against the Enquiry Officer. Under the circumstances, the first Enquiry Officer was removed, and a new Enquiry Officer was appointed. The second respondent challenged the same by way of a writ petition in WP No.19952/99. On 24.12.1999, the said writ petition was dismissed granting six months' time therefrom for the completion of the enquiry. Thereafter, the second respondent participated in the enquiry, and she was terminated. Then, the second show cause notice was served on her on 9.11.2001. She challenged the second show cause notice at that juncture on 16.11.2001 before this Court in WP No.22046/2001, and the matter came up for orders before this Court on 30.1.2003. The intervening circumstance was the date of superannuation of the second respondent on 30.4.2002. After the passing of that order, she did not participate. Under the circumstances, the matter was placed before the first respondent, the Educational Authority, for the approval of the termination. But, it was denied by way of an order which is under challenge, stating that actually she was to retire on 30.4.2002; that the order of termination was passed only on 30.4.2003; that the services of the person who was in service, could not be extended for the purpose of taking any action, and hence, approval could not be granted. Under the circumstances, this writ petition has been brought forth before this Court for the said relief.

5.In support of the writ petition, the learned Counsel for the petitioner would submit that in the instant case, originally, when the challenge was made by the second respondent as to the enquiry proceedings by way of writ petition, it was dismissed granting time; that the second respondent also participated in the enquiry; that subsequently, the order of termination was passed; that now, there was a communication addressed by the petitioner to the Educational Authority for the approval of the same; that it is true that the date of superannuation of the second respondent was 30.4.2002; but, she could not retire or could not be permitted to retire, since the proceedings were pending in this Court; that apart from that, an order came to be passed in WP No.22046/2001 only on 30.1.2003; that even in that order, this Court has made it clear that in view of the circumstances, though the impugned order was set aside, the fourth respondent therein, the petitioner herein, was permitted to further proceed with the enquiry from the stage of giving show cause notice as the petitioner had already been served with the report of the Enquiry Officer, and thus, it would be quite clear that on the date when the order came to be passed by this Court in WP No.22046/2001 on 30.1.2003, her services were actually in continuation; that apart from that, there was already a petition filed by the petitioner in WVMP No.462/2002 bringing to the notice of the Court that the date of superannuation of the second respondent was 30.4.2002, and it must be taken note of; but, it was not considered; that it was kept pending; that the said WVMP was also given a

disposal along with WP No.22046/2001; that the hands of the petitioner management were thoroughly tied; that it could not permit the second respondent to retire on 30.4.2002; that under the circumstances, there was no fault on the part of the petitioner management; that without considering these aspects of the matter, the first respondent has denied approval, and hence, the order of the first respondent has got to be quashed, and a direction be given for the approval of the same.

6.Contrary to the above contentions, the learned Senior Counsel for the second respondent would submit that in the instant case, the superannuation fell on 30.4.2002; that it is true that the proceedings were pending; but, it did not mean that she could be stopped from retiring; that in short, the case of the petitioner as could be seen, is that the person against whom charges were framed and enquiry was conducted, must be continued in service, and her services must be kept in continuance till the enquiry proceedings are over, and only for the purpose of taking action and termination of service, the services could be extended even after the date of superannuation, which cannot be done in law; that even if it is true that a writ petition was filed in WP No.22046/2001 bringing to the notice of the Court that the date of superannuation of the second respondent was 30.4.2002, a duty was cast upon the petitioner-management to bring to the notice of the Court and get early orders, but not done so; that they cannot find fault with the second respondent in the guise of the pendency of the proceedings; that subsequently, the second respondent filed a writ petition before this Court seeking for retirement benefits and bringing to the notice of the Court that she retired on 30.4.2002, in WP No.26413/2003; that in that writ petition, this Court has passed an order stating that in view of the fact that she retired on 30.4.2002, all the pensionary benefits and other benefits to which she was entitled, must be given to her; that in that order, it has also been recorded that she retired on 30.4.2002; that under the circumstances, it would be futile on the part of the petitioner to come forward to state that she did not retire and she could not be permitted to retire since the proceedings were pending, and the same cannot be heard; that the pendency of the proceedings cannot be a reason to stop her from retiring or to retire her; that if the contention put forth by the learned Counsel for the petitioner has got to be accepted, then it would be nothing but going against the settled principles of law, and hence, the writ petition has got to be dismissed.

7.In answer to the above, the learned Counsel for the petitioner would submit that as far as WP No.26413/2003 in which the petitioner herein was shown as third respondent, was concerned, nobody represented for the third respondent; that apart from that, they had no notice of the same; and that though it was recorded that the retirement date was 30.4.2002, and the second respondent was also entitled to the retirement benefits, the same would not have any binding force.

8.In answer to the above, the learned Senior Counsel for the second respondent would submit that the order of the Court made in that WP was immediately brought to the notice of the petitioner-management within a short span of time; and that the management had got the prior knowledge of the same; but, they have not taken any steps to set it aside or bring to the notice of the Court. Added further the learned Senior Counsel that there was a communication addressed by the management calling for a medical certificate and also her consent for the continuance of service;

that she was not inclined to continue or the period need not be extended; that under the circumstances, she was not willing as per the communication addressed by the management, and hence, the writ petition has got to be dismissed.

9.The learned Additional Government Pleader for the first respondent would make his submissions in order to affirm the denial of approval by the first respondent.

10.The Court paid its anxious consideration on the submissions made.

11.It is not in controversy that the second respondent was working as Reader/Teacher in the petitioner management. Some charges were levelled against her in March 1999. The explanation was tendered by her. An Enquiry Officer was appointed; but, she was not satisfied with the same. Under the circumstances, the appointment of the first Enquiry Officer was actually withdrawn, and again someone was appointed. The same was originally challenged by the petitioner in WP No.19952/99. While it was disposed of, time stipulation was made for completing the enquiry. It is also not in controversy that the second respondent participated in the same, and final orders came to be passed. Thereafter, the second show cause notice was served upon her. At that juncture, she filed WP No.22046/2001 and that writ petition was pending till 30.1.2003 when the orders came to be passed by this Court. It would be more appropriate to reproduce the order of this Court passed in that writ petition as follows:

"In view of the above, the impugned order is set aside. The 4<sup>th</sup> respondent is permitted to proceed with further proceedings from the stage of giving show cause notice as the petitioner had already been served with the report of the Enquiry Officer."

12.From the reading of the above order, it would be quite clear that on the date when the orders came to be passed by this Court, this Court was of the opinion that she was in service at that time. Further, in that order, nowhere it is mentioned that the date of superannuation was 30.4.2002. The contention put forth by the learned Counsel for the petitioner that WVMP No.462/2002 was already filed bringing to the notice of the Court that she was due to retire on attaining superannuation, on 30.4.2002, and that petition was also given a disposal along with WP No.22046/2001 cannot be countenanced. Once the date of retirement is known as 30.4.2002 and the petitioner management thought it fit to make an application, it must be brought to the notice of the Court immediately. What the management should do is to immediately bring to the notice of the Court the date of retirement namely 30.4.2002, but not done so. Now, the learned Counsel for the petitioner would submit that the said WVMP was also pending along with the WP, and it was given disposal along with the writ petition cannot be an answer to that. Apart from that, what is noticed is the date of superannuation as 30.4.2002. But, actually orders were passed on 30.4.2003, and that too, after a period of one year. The only explanation given by the petitioner's side, is that there was a stay granted by this Court, and it was also pending, and under the circumstances, nothing could be done. In the instant case, they have filed WVMP No.462/2002 seeking for vacating the stay and bringing to the notice of the Court that the date of retirement was 30.4.2002. Hence, the pendency of the proceedings cannot in any way help the petitioner in view of the circumstances narrated above.

13. In the instant case, the date of retirement was 30.4.2002. As rightly pointed out by the learned Senior Counsel for the second respondent, the period of service after superannuation, if the contention of the petitioner's side has got to be accepted, has got to be extended for the purpose of proceeding with the enquiry and passing an order of termination. This Court is of the considered opinion that now, the proceedings were over. Once the person has reached superannuation and the retirement is due, no question of further extending the service for the purpose of taking action or imposing any punishment would arise. Under the circumstances, mere pendency of the proceedings in this Court or the grant of stay, in the absence of any immediate steps taken by the petitioner, the petitioner has to take the result of the same, and they cannot find fault with the respondents' side.

14. Added further, in the instant case, subsequent to the date of retirement, a writ petition was filed by the second respondent in WP No.26413/2003 bringing to the notice of the Court that she is entitled to the pensionary benefits and that should be ordered, in which the petitioner management is shown as third respondent. The contention put forth by the learned Counsel for the petitioner herein and the third respondent in that writ petition that there was no notice served, and the management was not represented, and hence, that order would not be binding on them cannot be countenanced for the simple reason that immediately after the orders were passed by this Court, it was brought to the notice of the management by a proper communication by the second respondent; but, the petitioner did not take any steps to rescind the order. Under the circumstances, that order has become final.

15. Added further, there was a communication made by the petitioner management to the second respondent just preceding the due date of retirement, calling for her consent for continuation in service and also calling for medical certificate for which there was an immediate reply stating that she was not willing, and her services need not be extended. Thus, the cumulative circumstances would clearly indicate that the management despite the date of superannuation on 30.4.2002, allowed her to continue in service for the purpose of proceeding with the enquiry and passing an order of termination against her, which cannot be justified. Mere pendency of the proceedings in which the petitioner has not taken steps immediately to bring to the notice of the Court that her date of retirement was 30.4.2002 would suffice to refuse the relief. In such circumstances, the authority below was perfectly correct in denying the approval of the order of termination of the second respondent.

16. Therefore, this writ petition must fail. Hence, the same fails and is, accordingly, dismissed. However, the authority concerned is directed to give effect to the earlier order of this Court passed in WP No.26413/2003 dated 22.9.2003, within a period of eight weeks herefrom. No costs. Consequently, connected WPMPs are also dismissed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1.The Joint Director of Collegiate  
Education  
Chennai Region, Chennai 2.

1 CC To Mr.Muthumani Doraisami, Advocate, SR NO.54770.  
1 CC To Mr.R.Shankara Narayanan, Advocate, SR NO.55030.

WP No.33539 of 2003

AKR(CO)  
RVL 05.09.2007

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